

VZCZCXRO9382

PP RUEHAO RUEHCD RUEHGA RUEHGD RUEHHA RUEHHO RUEHMC RUEHMT RUEHNG
RUEHNL RUEHQU RUEHRD RUEHRG RUEHRS RUEHTM RUEHVC
DE RUEHCV #0902/01 1971733
ZNY CCCCC ZZH
P 161733Z JUL 09
FM AMEMBASSY CARACAS
TO RUEHC/SECSTATE WASHDC PRIORITY 3390
INFO RUEHW/H/WESTERN HEMISPHERIC AFFAIRS DIPLO POSTS
RUEIAYF/ATO LATIN AMERICA
RHEHNSC/NSC WASHDC
RUMIAAA/HQ USSOUTHCOM MIAMI FL
RUCPDOC/DEPT OF COMMERCE
RUEATRS/DEPT OF TREASURY

C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 000902

SIPDIS

HQ SOUTHCOT ALSO FOR POLAD
TREASURY FOR RJARPE
NSC FOR RKING
USDOC FOR 4332 MAC/ITA/WH/JLAO

E.O. 12958: DECL: 07/16/2019
TAGS: [ECIN](#) [ECON](#) [EFIN](#) [EIND](#) [EMIN](#) [ENIV](#) [ETRD](#) [ETTC](#) [KIDE](#)
KIPR, KTIA, VE
SUBJECT: VENEZUELA TO CHANGE INDUSTRIAL PROPERTY LAW TO
PROMOTE "SOCIALIST COMMERCE"

REF: A. CARACAS 770
[1B.](#) CARACAS 1427

Classified By: Economic Counselor Darnall Steuart for reasons 1.4 (b)
and (d).

[¶1.](#) (SBU) Summary. The government of the Bolivarian Republic of Venezuela (GBRV) is reportedly well along with plans to reform its principal industrial property law. According to press reports of remarks by Commerce Minister Eduardo Saman at a July 9 conference, however, this might only be the first phase in a concerted GBRV effort to reform its laws on competition and foreign capital in order to develop a system of "socialist commerce."

Reform of Industrial Property Law

[¶2.](#) (C) As reported reftels, after pulling out of the Andean Community (and thus the application of Decision 486, the Community's Common Intellectual Property Regime) on April 22, 2006, the GBRV declared in September 2008 that it had resurrected the 1955 Industrial Property Law which expressly prohibited the issuance of patents for pharmaceuticals and other products. Commerce Minister Eduardo Saman is now believed to be pressing for reform of the 1955 Law (ref A). According to the website for the Autonomous Service for Intellectual Property (SAPI), the proposed reforms will annul existing pharmaceutical patents in order to lower drug prices and stimulate domestic production of generic equivalents.

[¶3.](#) (C) In an interview recently published on SAPI's website, Saman described patents as a mechanism to "monopolize" the pharmaceutical market and impede the distribution of benefits that improve the quality of life of Venezuelans. Saman appears to have the full support of President Chavez, who has called pharmaceutical patents a "trap" and said that Venezuelans "don't have to be subject to capitalist laws."

[¶4.](#) (C) On July 8, Baker & McKenzie attorney Dianne Phoebus (protect throughout) told EconOffs that draft modifications of the 1955 law are "mature." Phoebus said that while no existing patents have been annulled to date, SAPI has started to deny patent applications. She pointed to the recent denial of an application for a GlaxoSmithKline Hepatitis B vaccine as an example, saying that the application had been filed in 2006 under the Decision 486 regime but denied under the 1955 law. Phoebus added that there are also indications that SAPI is seeking to kill other applications through the application of technicalities in the 1955 law.

[¶5.](#) (C) Phoebus explained that the proposed industrial property reform reportedly gives the GBRV legal authority to grant obligatory licenses to override patents and manufacture generic versions of drugs. Phoebus said that this provision is legally consistent with the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) provided that it is only applied during national emergencies, such as the outbreak of an infectious disease epidemic. Phoebus believes, however, that the reform also contains provisions to oblige international companies to transfer technical information when signing agreements or contracts with the GBRV, an additional provision that is particularly worrisome for international pharmaceutical companies.

Socialism, Inc.

¶6. (C) With respect to trademarks, Phoebus said that the reactivation of the 1955 law required companies to file trademarks under both national and international classification systems. SAPI also mandates that companies pay for an official search of the national database of previously registered trademarks prior to filing a trademark application. Phoebus said that such searches were not required under the 1955 law and added bluntly that this is an

CARACAS 00000902 002 OF 002

attempt by the National Registry to raise money. As a final step, trademark applications must be published in one of two government-endorsed newspapers. Phoebus concluded that the requirements are mostly a burdensome and costly irritant for companies registering trademarks in the country. In recent public remarks Saman has indicated that trademarks would also be considered in the industrial property reform.

ALBA Signatories Also Required To Implement IR Reforms

¶7. (SBU) Saman has said that LBA signatories will also be required to change their laws in accordance with the GBRV's patent reforms. In an article published July 2 on SAPI's website, Saman said that a new IPR doctrine "is part of the liberalization of our people in the face of so-called globalization, which is luckily in crisis." Saman added that Venezuela is coordinating a working group with ALBA members to change the organization's doctrine on industrial property rights.

Industrial Property Changes Only The First Step

¶8. (SBU) The patent and trademark reforms are part of a broader plan to institute a new system of "socialist commerce," according to press reports of remarks by Commerce Minister Saman at a July 9 conference. The plan reportedly includes five "lines of action": 1) develop industrial production; 2) institute social control of the means of distribution; 3) establish the role of the State in setting prices; 4) substitute "consumerism" with the satisfaction of social needs; and 5) promote the "geopolitics of exchange," based on the necessity to export to ALBA and other markets "of the south." A package of legislative changes to accompany this plan is widely believed to be in the offing.

¶9. (SBU) Saman said that the purpose of the "socialist commerce" model is to replace importation with domestic production. Saman told the group of 80 business and industry representatives in attendance, "Don't get scared when there is talk of Marxism. You have to lose your fear (it's the only model that does not exclude)." To achieve this goal, the GBRV will only accept external investment if it promotes technology transfer, Saman said. The GBRV will also institute anti-dumping measures to protect "strategic sectors," specifically mentioning "footwear, confectionary goods, paper, iron, steel, and plastic."

Comment

¶10. (C) Commerce Minister Saman's public comments indicate that he is a committed Marxist who intends to move Venezuela further towards a new "socialist commerce" system. Indications are that he enjoys the full support of President Chavez. While the details of the "socialist commerce" system are unclear, any changes to Venezuela's industrial property regime or to any other laws are likely to increase GBRV control of economic activity in the country. End comment.
CAULFIELD